



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 10 2008

Lyn Utrecht
Karen Zeglis
Ryan, Phillips, Utrecht & MacKinnon
1133 Connecticut Avenue, N.W., Suite 300
Washington, D.C. 20036

RE: MUR 5970
Donna Edwards
Donna Edwards for Congress and Janice
Edwards, in her official capacity as
Treasurer

Dear Ms. Utrecht and Ms. Zeglis:

On February 5, 2008, the Federal Election Commission notified your clients, Donna Edwards ("Edwards") and Donna Edwards for Congress and Janice Edwards, in her official capacity as Treasurer ("committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On October 22, 2008, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Edwards violated 2 U.S.C. § 441a(f) or the committee violated 2 U.S.C. §§ 434(b) and 441a(f). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Elena Paoli, the attorney assigned to this matter at (202) 694-1548.

Sincerely,

A handwritten signature in black ink that reads "Julie K. McConnell/eip".

Julie K. McConnell
Assistant General Counsel

Enclosure: Factual and Legal Analysis

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1
2 **FEDERAL ELECTION COMMISSION**

3 **FACTUAL AND LEGAL ANALYSIS**
4

5 **RESPONDENTS:** Donna Edwards MUR: 5970
6 Donna Edwards for Congress and
7 Janice Edwards, in her official capacity as treasurer
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9

10 **I. INTRODUCTION**
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12 This matter was generated by a complaint filed with the Federal Election Commission by
13 Lori Sherwood. See 2 U.S.C. § 437g(a)(1). The complaint alleges that Donna Edwards for
14 Congress and Janice Edwards, in her official capacity as Treasurer ("Edwards Committee" or
15 "Committee"), and Donna Edwards, a congressional candidate in Maryland, accepted around
16 \$130,000 in contributions from organizations that benefitted from her work in the private sector.
17 The complaint alleges that many organizations made excessive contributions and excessive in-
18 kind contributions through coordination with her Committee. The complaint also alleges that
19 certain 501(c)(3) groups "actively engaged in prohibited activities," although the complaint gives
20 no specifics about such activity or how it violates FECA. The complaint further alleges that the
21 Committee and other respondents violated reporting provisions of the Act due to the above
22 violations.

23 **II. FACTUAL AND LEGAL ANALYSIS**
24

25 The complaint makes many broad allegations regarding "potentially questionable"
26 relationships among various groups, persons employed by or directing those groups, and
27 Edwards. The complaint suggests that these questionable relationships have benefited the
Edwards campaign through unreported, excessive contributions, and excessive in-kind

1 contributions. While the complaint alleges very few facts that implicate FECA, the allegations
2 can be divided into three distinct groups: (1) those related to her private sector work; (2) those
3 related to organizations that supported her candidacy; and (3) third-party vendors and
4 organizations located at the same address as these vendors.

5 **A. Donna Edwards' Work in the Private Sector**

6 Many of the allegations in the complaint focus on Edwards' role as Executive Director of
7 The ARCA Foundation ("ARCA") and ARCA's relationship to other non-profit groups. ARCA
8 is a 501(c)(3) organization "dedicated to the pursuit of social equity and justice." See
9 www.arcafoundation.org/mission/htm. As Executive Director since January 2000, Edwards
10 reviews grant proposals and makes recommendations to the ARCA Board of Directors regarding
11 which proposals to fund. Edwards has taken leaves of absence from ARCA during two
12 campaigns for federal office. On April 17, 2006, Edwards filed her Statement of Candidacy for
13 the 2006 Primary Election and took a leave of absence from June 1, 2006 through September 15,
14 2006. On April 27, 2007, she filed her Statement of Candidacy for the 2008 Primary Election
15 and took a leave of absence from August 31, 2007 through February 15, 2008.

16 The complaint alleges that Edwards, through ARCA, gave grants to the League of
17 Conservation Voters ("LCV") and Friends of the Earth ("FOE"), and in return those groups
18 contributed to the Committee, constituting unreported and excessive in-kind contributions. In
19 her response, Edwards states that she makes recommendations on grant proposals to the ARCA
20 Board but she has no authority to grant funds from ARCA. Edwards acknowledges that her
21 Committee received contributions from the PACs of some of the respondents and from

individuals employed by them, but she states that ARCA grants money to organizations on the merits of the grant application and "not based on any anticipated or possible political benefit."

The Act, as amended by BCRA, provides that no person shall make contributions to any candidate and his or her authorized political committee with respect to any election for federal office, which, in the aggregate, exceed \$2,300. 2 U.S.C. § 441a(a)(1)(A). Further, candidates and political committees are prohibited from knowingly accepting any contributions in excess of the Act's limitations. 2 U.S.C. § 441a(f). Political committees must report receipts in their disclosure reports. 2 U.S.C. §§ 434(a) and (b).

The following chart summarizes the complaint allegations and analysis.

CHART 1

RESPONDENT	COMPLAINT ALLEGATIONS	RESPONSE	ANALYSIS
Donna Edwards and Donna Edwards for Congress, and Janice Edwards, in her official capacity as Treasurer	Edwards is the Executive Director of ARCA. ARCA gave more than \$4 million in grants to 39 organizations that made \$138,500 in contributions to her committee.	It is not clear what is being alleged. Donna Edwards only makes recommendations regarding grant recipients; the ARCA Board of Directors votes to determine grant recipients. In addition, Edwards took leaves of absence from ARCA during her campaigns.	There is no information suggesting that contributions to Edwards from respondent PACs and individuals employed by respondents were given in exchange for grants to the respondents from ARCA. Therefore, there is no reason to believe that (1) Edwards violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions or excessive in-kind contributions from any respondent, or (2) the Edwards Committee violated 2 U.S.C. § 441a(f) by knowingly accepting such contributions or 2 U.S.C. § 434(b) by failing to report any such contributions.

RESPONDENT	COMPLAINT ALLEGATIONS	RESPONSE	ANALYSIS
ARCA	ARCA grants to organizations are excessive, in-kind contributions to Edwards because those organizations in-turn made contributions to Edwards.		There is no information suggesting that contributions to Edwards from respondent PACs and individuals employed by respondents were given in exchange for grants to the respondents from ARCA. Therefore, there is no reason to believe that (1) Edwards violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions or excessive in-kind contributions from any respondent, or (2) the Edwards Committee violated 2 U.S.C. § 441a(f) by knowingly accepting such contributions or 2 U.S.C. § 434(b) by failing to report any such contributions.
League of Conservation Voters	ARCA gave money to LCV. LCV gave money to Edwards and promoted her campaign.		LCV PAC made a contribution to Edwards, and individuals associated with LCV made individual contributions, all within legal limits. There is no information suggesting that contributions to Edwards from LCV's PAC and individuals employed by LCV were given in exchange for a grant to LCV Education Fund. Therefore, there is no reason to believe that: (1) Edwards violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions or excessive in-kind contributions from any respondent, or (2) the Edwards Committee violated 2 U.S.C.

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RESPONDENT	COMPLAINT ALLEGATIONS	RESPONSE	ANALYSIS
			§ 441a(f) by knowingly accepting such contributions or 2 U.S.C. § 434(b) by failing to report any such contributions.
Friends of the Earth	ARCA gave money to FOE. FOE endorsed Edwards and contributed to her campaign through board members, employees and its PAC.	.	There is no information suggesting that contributions to Edwards from FOE's PAC and its president were given in exchange for grants to FOE from ARCA. Therefore, there is no reason to believe that: (1) Edwards violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions or excessive in-kind contributions from any respondent, or (2) the Edwards Committee violated 2 U.S.C. § 441a(f) by knowingly accepting such contributions or 2 U.S.C. § 434(b) by failing to report any such contributions.

B. Organizations that Supported Donna Edwards by Endorsing Her or Making Independent Expenditures on Her Behalf

The complaint also alleges that the Committee and certain respondents coordinated with each other such that the resulting communications constituted excessive, in-kind contributions. Based on the available information, it appears that independent expenditure campaigns were conducted in support of Edwards' candidacy and Edwards received endorsements.

Under the Act and Commission regulations, the terms "contribution" and "expenditure" include any gift of money or "anything of value" made by any person for the purpose of

1 influencing a Federal election. See 2 U.S.C. § 431(8)(A)(i) and (9)(A)(i); 11 C.F.R. § 100.52(a)
2 and 100.111(a). The phrase “anything of value” includes all in-kind contributions. See 11 CFR
3 § 100.52(d)(1) and 100.111(e)(1). In-kind contributions include expenditures made by any
4 person “in cooperation, consultation, or concert, with, or at the request or suggestion of” a
5 candidate, a candidate’s authorized committees, or their agents. 2 U.S.C. § 441a(a)(7)(B)(i).

6 Commission regulations specify a three-prong test to determine whether a payment for a
7 communication becomes an in-kind contribution as a result of coordination between the person
8 making the payment and a candidate. See 11 C.F.R. § 109.21(a)(1)-(3). Under the first prong of
9 the coordinated communication test, the communication must be paid for by a person other than
10 a candidate, a candidate’s authorized committee, a political party committee, or agents of any of
11 the foregoing. See 11 C.F.R. § 109.21(a)(1). Under the second prong, the communication must
12 satisfy one of the four content standards set forth in 11 C.F.R. § 109.21(c).¹ Under the third

¹ After the decision in *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005) (Court of Appeals affirmed the District Court’s invalidation of the fourth, or “public communication,” content standard of the coordinated communications regulation), the Commission made revisions to 11 C.F.R. § 109.21 that became effective July 10, 2006. In a subsequent challenge by Shays, the U.S. District Court for the District of Columbia held that the Commission’s content and conduct standards of the coordinated communications regulation at 11 C.F.R. § 109.21(c) and (d) violated the Administrative Procedure Act; however, the court did not vacate the regulations or enjoin the Commission from enforcing them. See *Shays v. FEC*, 508 F.Supp.2d 10, 70-71 (D.D.C. Sept. 12, 2007) (NO. CIV.A. 06-1247 (CKK)) (granting in part and denying part the respective parties’ motions for summary judgment). Recently, the D.C. Circuit affirmed the district court with respect to, *inter alia*, the content standard for public communications made before the time frames specified in the standard, and the rule for when former campaign employees and common vendors may share material information with other persons who finance public communications. See *Shays v. FEC*, ___ F.3d ___, (D.C. Cir. 2008).

prong, the communication must satisfy one of the five conduct standards set forth in 11 C.F.R.

§ 109.21(d).²

The allegations in the complaint were vague and speculative. The following chart summarizes the allegations and analysis:

CHART 2

RESPONDENT	COMPLAINT ALLEGATIONS	RESPONSE	ANALYSIS
League of Conservation Voters	ARCA gave money to LCV. LCV gave money to Edwards and promoted her campaign. There's an "appearance of coordination."		The complaint's allegations are vague, and it appears that Edwards was ex-communicated by granting her a leave of absence from the LCV Board of Directors. Based on the absence of facts alleging conduct that would constitute coordination, there is no information that the conduct standard of the coordination regulations has been met. See 11 C.F.R. § 109.21(d). Therefore, there is no reason to believe that (1) Edwards violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions or excessive in-kind contributions in the form of a coordinated communication, or (2) the Edwards Committee violated 2 U.S.C. § 441a(f) by knowingly accepting such contributions or 2

² The conduct prong is satisfied where any of the following types of conduct occurs: (1) the communication was created, produced or distributed at the request or suggestion of a candidate or his campaign; (2) the candidate or his campaign was materially involved in decisions regarding the communication; (3) the communication was created, produced, or distributed after substantial discussions with the campaign or its agents; (4) the parties contracted with or employed a common vendor that used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; (5) the payor employed a former employee or independent contractor of the candidate who used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; or (6) the payor republished campaign material. See 11 C.F.R. § 109.21(d).

RESPONDENT	COMPLAINT ALLEGATIONS	RESPONSE	ANALYSIS
			U.S.C. § 434(b) by failing to report any such contributions.
EMILY's List and Ranny Cooper, in his official capacity as Treasurer	Edwards and EMILY's List have "clearly joined forces." EMILY's list sent an email promoting Edwards' candidacy, and it was approved and authorized by Edwards.	The Edwards Committee states in its response that it paid EMILY's List for web services and properly reported those expenditures.	The complaint does not allege facts that state a violation of the Act. Moreover, the Committee paid for the communication. Thus, the payment prong of the coordination regulations is not met. See 11 C.F.R. § 109.21(a)(1). Therefore, there is no reason to believe that (1) Edwards violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions or excessive in-kind contributions in the form of a coordinated communication, or (2) the Edwards Committee violated 2 U.S.C. § 441a(f) by knowingly accepting such contributions or 2 U.S.C. § 434(b) by failing to report any such contributions.
1199 SEIU and 1199 SEIU Federal Political Action Fund ("1199 SEIU PAC") and Patrick Gaspard, in his official capacity as Treasurer	SEIU disseminated campaign literature. It may have "collaborated" with Edwards. Also, Edwards and Anna Burger, the SEIU national political head, co-founded They Work For Us, Inc. (see below).	The Edwards campaign manager states that no one from the Committee participated in the creation or dissemination of any literature intended for distribution beyond the Union membership.	The complaint's broad legal conclusion of "collaboration" is not supported by facts. It appears that the conduct standard of the coordination regulations has not been met. See 11 C.F.R. § 109.21(d). The Edwards Committee's response leaves open the possibility that her campaign worked on union communications to its restricted class, but this activity would not constitute coordination because the regulation's content standard would not be met, see 11 C.F.R. § 109.21(c), and would be permissible under 11 C.F.R. §§ 114.2(c) and 114.3(a).

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RESPONDENT	COMPLAINT ALLEGATIONS	RESPONSE	ANALYSIS
			Therefore, there is no reason to believe that (1) Edwards violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions or excessive in-kind contributions in the form of a coordinated communication, or (2) the Edwards Committee violated 2 U.S.C. § 441a(f) by knowingly accepting such contributions or 2 U.S.C. § 434(b) by failing to report any such contributions.
They Work for Us, Inc. ("TWFU")	TWFU "apparently facilitated placement of political ads in conjunction with SEIU." TWFU has become a conduit for campaign contributions and an alleged 501(c)(4) "lobbying wing. Edwards coordinated with TWFU.	The Edwards' campaign manager attests that no one from the Committee participated in any literature or ad that may have been sent by TWFU.	<p>The complaint does not allege facts that state a violation of the Act. TWFU did fund a radio broadcast that referred to Edwards' opponent shortly before the February 2008 Primary. See TWFU Response to RFAI, May 22, 2008. TWFU filed a Form 9 with the Commission to disclose this Electioneering Communication (albeit late). We have not been able to obtain a copy of the radio ad.</p> <p>Based on the facts alleged and the response, there is no information that the conduct standard of the coordination regulations has been satisfied. Moreover, the Edwards campaign manager specifically states that no one from the campaign staff participated on any literature or ad with TWFU. Therefore, there is no reason to believe that (1) Edwards violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions or excessive in-kind contributions in the form of a coordinated</p>

RESPONDENT	COMPLAINT ALLEGATIONS	RESPONSE	ANALYSIS
			communication, or (2) the Edwards Committee violated 2 U.S.C. § 441a(f) by knowingly accepting such contributions or 2 U.S.C. § 434(b) by failing to report any such contributions.
Communities Voting Together, a public advocacy, unincorporated association with a related "527" group.	CVT disseminated a mailer, which constitutes an excessive and unreported contribution. CVT hired canvassers to assist the Edwards campaign.	The Edwards campaign manager attests that the Committee was not involved in the production or dissemination of the CVT communications.	The response sufficiently rebuts the complaint's vague allegations that CVT and Edwards coordinated the CVT leaflets. The 2006 leaflet, and purportedly similar 2008 leaflet, are issue focused and ask the reader to call Wynn to explain his energy policies. Therefore, there is no reason to believe that (1) Edwards violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions or excessive in-kind contributions in the form of a coordinated communication, or (2) the Edwards Committee violated 2 U.S.C. § 441a(f) by knowingly accepting such contributions or 2 U.S.C. § 434(b) by failing to report any such contributions.

C. Third-Party Vendors and Organizations Located at the Same Address as those Vendors

The complaint further alleges that several third parties made excessive in-kind contributions to the Edwards committee. It also alleges that the Edwards committee made expenditures to non-profit organizations and that many of these organizations must have collaborated because they have the same address. The following chart summarizes the allegations and analysis:

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CHART 3

RESPONDENT	COMPLAINT ALLEGATIONS	ANALYSIS
SEIU Local 100	SEIU Local is at the same address as CVT, <i>see supra</i> Chart 2, and ACORN (see below). The chief organizer of Local 100 is the founder of ACORN.	The facts alleged do not state a FECA violation.
Citizens Consulting, Inc.	No allegations.	The facts alleged do not state a FECA violation.
Citizens Services, Inc., a political consulting firm	The Edwards committee paid \$76,866 to Citizens Services Inc. for get-out-the-vote activities. This non-profit received money in a coordinated effort and engaged in political activity.	The facts alleged do not state a violation of the Act.
ACORN	ACORN has made independent expenditures on behalf of Edwards.	The facts alleged do not state a FECA violation.

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